DUANE, MORRIS & HECKSCHER

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HARRISBURG OFFICE WILLIS F. DANIELS HAROLD W. SWOPE

**ADMITTED IN DELAWARE ONLY

DIRECT DIAL: 854-

6407

December 11, 1986

Honorable James H. Bayne Secretary Interstate Commerce Commission 12th & Constitution Avenue Washington, D.C. 20423

DEC 18 1906 2- 8 1 761 DEC 18

INTERSTATE COMMERCE COMMISSION

ICC Weshington, D. C.

Too \$.10.00

Re: Lease Agreement dated as of June 6, 1986
between Unionmutual Stock Life Insurance Co.
of America/Union Mutual Life Insurance Company
and Indiana Hi-Rail Corporation

Dear Mr. Bayne:

On behalf of Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, a fully executed original and two certified true copies of an original document, not previously recorded, entitled Lease Agreement, dated as of June 6, 1986.

The equipment covered by the aforementioned documents consists of the following:

50 4,750 cubic foot covered hopper cars, AAR Mechanical Designation: LO.

The parties to the foregoing Lease Agreement are Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as lessor, and Indiana Hi-Rail

Honorable James H. Bayne December 11, 1986 Page 2

Corporation, as lessee.

Enclosed also is a check in the amount of \$10 payable to the Interstate Commerce Commission, representing the fee for recording the enclosed document.

A short summary of the enclosed document to appear in the Index is as follows:

"Lease of 50 4,750 cubic foot covered hopper cars, AAR Mechanical Designation: LO.

Once this filing has been made, please return to the undersigned the stamped counterpart of the document or documents not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Sincerely,

for DUANE, MORRIS & HECKSCHER

as attorneys for LaSalle National Bank

MAF:cz Enclosures

cc: Shelly Stuart Carvel, Esquire (w/o encls.)

DUANE, MORRIS & HECKSCHER

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December 11, 1986

5126 Fired to the controls

proceduation no. DEC 18 1985 2 2 0 0 PM

Honorable James H. Bayne Secretary Interstate Commerce Commission 12th & Constitution Avenue Washington, D.C. 20423

INTERSTALL COMMERCE COMMERCED

Re: Lease Agreement dated as of June 6, 1986 between Unionmutual Stock Life Insurance Co. of America/Union Mutual Life Insurance Company and Indiana Hi-Rail Corporation

Dear Mr. Bayne:

On behalf of Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, a fully executed original and two certified true copies of an original document, not previously recorded, entitled Lease Agreement, dated as of June 6, 1986.

The equipment covered by the aforementioned document consists of the following:

> 50 4,750 cubic foot covered hopper cars, AAR Mechanical Designation:

The parties to the foregoing Lease Agreement are Unionmutual Stock Life Insurance Co. of America and Union Mutual Life Insurance Company, as lessor, and Indiana Hi-Rail

Honorable James H. Bayne December 11, 1986 Page 2

Corporation, as lessee.

Enclosed also is a check in the amount of \$10 payable to the Interstate Commerce Commission, representing the fee for recording the enclosed document.

A short summary of the enclosed document to appear in the Index is as follows:

"Lease of 50 4,750 cubic foot covered hopper cars, AAR Mechanical Designation: LO.

Once this filing has been made, please return to the undersigned the stamped counterpart of the document or documents not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Sincerely

for DUANE, MORRIS & HECKSCHER

as attorneys for LaSalle National Bank

MAF:cz Enclosures

cc: Shelly Stuart Carvel, Esquire (w/o encls.)

Interstate Commerce Commission Washington, D.C. 20423

OFFICE OF THE SECRETARY

Marshall A. Fleisher

Duane & Morris & Heckscher

One Franklin Plaza

Phila. PA.19102

Dear Sig :

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/18/86 at $2:20\,\mathrm{pm}$, and assigned rerecordation number(s). 15126

Sincerely yours,

Mareta R. M. See

Enclosure(s)

DEC 18 1985 1 5 0 m

LEASE AGREEMENT

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AGREEMENT made and entered into as of this 6th day of June, 1986, between UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA AND UNION MUTUAL LIFE INSURANCE COMPANY both Maine corporations(hereinafter called "Lessor")

and

INDIANA HI-RAIL CORPORATION an Indiana corporation (hereinafter called "Lessee")

RECITALS

Lessee desires to lease from Lessor certain railroad freight cars, hereinafter specifically designated or to be specifically designated, all upon the rentals, terms and conditions as set forth in this Lease.

AGREEMENT

It is agreed:

- 1. Lease of Cars. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor that number of railroad cars of the type, construction, and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule I of this Lease and in other Schedules which may from time to time be added to this Lease. Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the earlier of the date of its delivery to Lessee's railroad tracks, or July 1, 1986, and shall continue with respect to such Car for the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. Lessor shall deliver the Cars f.o.t. at the delivery point' specified in the Schedule covering such Cars.
- 2. Rental. From the time of delivery and acceptance of each Car hereunder, Lessor shall receive as rent 62% of carhire payments (including but not limited to mileage earnings and hourly carhire and without reduction for carhire reclaims by railroads or shippers) earned in accordance with the provisions of the Code of Car Hire Rules and Interpretations - Freight on account of the use of the Cars by other railroads for each month or part thereof. Lessee shall be entitled to retain the excess of such car hire payments over the rental due hereunder. Lessee will not be required to make carhire payments in respect of the Cars when the Cars are on Lessee's railroad tracks.

It is understood that the information which is necessary to calculate the amount of monthly rental is customarily unavailable for use until approximately 90 days following the end of the service month; therefore, it is agreed that the calculation for each month shall be performed within the 90-day period following the close of

each service month and payment shall be made to Lessor within 10 days of such calculation.

- 3. Acceptance of Cars. Within five (5) days after Lessor shall notify Lessee that the Cars are ready for delivery, Lessee will have its authorized representative inspect such Cars at their current location at Gerard Point, Philadelphia, and accept or reject them as being in good operating condition and otherwise being or failing to be in compliance with the terms hereof. Cars so inspected and accepted, and any Cars which Lessee elects not to inspect, shall be conclusively deemed to meet all the requirements of this Lease and shall be conclusively deemed delivered to and accepted by Lessee following such inspection and arrival of such Cars on the railroad tracks of Lessee.
- 4. Records. Lessee shall keep records of and monitor the use, movement, and maintenance of all Cars and shall provide Lessor all information and copies of all records and reports pertaining to the Cars received by or available to Lessee. It is acknowledged that carhire reconciliation services are provided to Lessee by a third party, and Lessee agrees to furnish Lessor with copies of all reports in respect of the Cars prepared by such third party. In addition, Lessee shall provide Lessor with reports of any maintenance on the Cars performed by Lessee, showing in reasonable detail the date, location, and nature of mantenance work performed. Lessor shall have the right at any time on reasonable notice to Lessee to audit and verify any such information, records and reports and other data pertinent thereto, and Lessee shall cooperate with and assist Lessor in any such review. Lessee will at Lessor's expense take all appropriate action to record and register the Cars as Lessor may request.
- 5. <u>Use Lettering.</u> Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which they were designed. From and after delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use and quiet enjoyment of the Car for the full term of this Lease, but solely within the continental limits of the United States of America.

Upon delivery of the Cars to Lessee's railroad tracks, Lessee, at its expense, will stencil the Cars with Lessee's railroad reporting marks in accordance with AAR regulations. At the termination of the Lease, Lessee will, at Lessor's expense, restencil the Cars to those reporting marks designated by Lessor, provided however, that in the event the Lease is early terminated as a result of the failure of the rentals to achieve the minimum levels as specified in paragraph 9 hereof, such remarking shall be at Lessee's expense. Except for such remarking of the Cars by Lessee upon delivery, or thereafter pursuant to the requirements of any assignee or mortgagee of Lessor as permitted in Paragraph 10 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of Lessor.

Lessee shall give preference and shall load the Cars prior to loading similar freight cars interchanged from other railroads or

leased from other parties or purchased by Lessee subsequent to the date of this Lease, provided however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities on reasonable request to shippers on its railroad tracks, and provided further, Lessee shall not have to give priority to the loading of a Car at the expense of unreasonably disrupting Lessee's normal operations. Lessee shall furnish Lessor with a schedule of any similar cars having priority over the Cars.

- 6. Repair Work. Except as otherwise provided herein, Lessor shall be responsible for the cost of any and all Repair Work performed on the Cars. Lessee shall at its sole cost and expense perform or cause to be performed all Repair Work required by reason of the negligence of Lessee or any affiliate of Lessee. Lessee may perform running repairs required to keep the Cars in safe operating condition in accordance with AAR regulations. In addition, Lessee agrees to perform preventive maintenance recommended by Lessee and requested by Lessor. Notwithstanding the above, Lessee shall not perform (i) any running repair with an estimated cost in exces of \$500.00, or (ii) any preventive maintenance without Lessor's prior written consent. Lessee agrees that any Repair Work performed by Lessee will be charged on the basis of seventy (70) percent of the then current AAR Labor Billing Any maintenance charges will be billed monthly by Lessee in reasonable detail, and such charges will be due and payable by Lessor witin thirty days. Lessee may not offset maintenance charges against rentals due Lessor hereunder. Lessor may (i) require Lessee to return Cars for preventive maintenance or Repair Work, and (ii) terminate this Lease in the event demonstratable Repair Work for the Cars exceeds an average of \$90.00 per Car in any calendar quarter, provided however, that Lessee may retain the use of the Cars by reimbursing Lessor for the amount by which actual Repair Work exceeds an average of \$90.00 per Car for such period.
- 7. Casualty Cars Insurance. Lessor shall bear the risk of any Car which is lost, stolen, destroyed, or damaged beyond economical repair ("Casualty Car") on other than Lessee's railroad tracks. Lessee shall bear the risk of and be responsible for any Car which is lost, stolen, destroyed or damaged beyond economical repair on its lines, and Lessee shall within thirty (30) days of any such event, pay to Lessor the amount provided in the Interchange Rules for such destroyed Car. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to Lessor, and Lessee shall use best efforts along with Lessor in the prosecution and collection of all claims therefor.

At the request of Lessor, and to the extent permitted by the policies, Lessee shall cause Lessor to be named as an additional insured under any of Lessee's insurance policies providing physical damage coverage on the Cars or third party liability coverage in respect of the Cars or their operation. Lessor shall be responsible for and shall promptly reimburse Lessee for any incremental costs of obtaining such extensions of Lessee's insurance coverage.

- 8. Taxes. Lessor shall be liable for and pay (or shall reimburse Lessee for) all Federal, State, or other governmental property taxes assessed or levied against the Cars. Lessee shall be liable at all times for and shall pay or reimburse Lessor for payment of (i) all Federal, State, or Local sales or use taxes imposed upon or in connection with the Cars, this Lease, or the manufacture, acquisition, or use of the Cars for or under this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iii) all taxes or governmental charges assessed or levied upon its interest as Lessee of the Cars.
- 9. Termination. This Lease shall terminate upon the expiration of its term, at election of either party hereto by reason of the default or breach of the other party of the terms hereof, or upon the election of Lessor as hereinafter provided. In the event of a default or breach by either party, the other party may elect to terminate this Lease with respect to less than all of the Cars. In the event that the rental payable to Lessor for any calendar quarter shall average less than \$900.00 per Car, then Lessor may at its option upon thirty days written notice to Lessee, terminate this Lease as to any or all Cars; provided however, that Lessee may retain the use of the Cars by paying to Lessor within five (5) days the amount by which \$900.00 multiplied by the number of Cars then subject to this Lease exceeds the actual rental for such quarter. In addition, at any time after July 1, 1989, Lessor shall have the right, upon thirty days written notice to Lessee, to terminate this Lease as to not less than all the Cars for the sole purpose of concluding a sale of the Cars (or lease which is the equivlent of a sale).

Upon termination of this Lease as to any Car or Cars for whatever reason, Lessee shall return such Cars to Lessor in the same condition (except Casualty Cars) in which the Cars were originally delivered to Lessee and maintained by Lessor, ordinary wear and tear excepted. Upon such termination, Lessee shall at its sole cost and expense forthwith surrender possession of such Cars to Lessor at an interchange point with Lessee's railroad tracks requested by Lessor. If requested by Lessor, Lessee shall provide free storage for terminated Cars for a period of up to ninety (90) days, and shall provide outbound loadings for such Cars if such loadings are available on Lessee's railroad tracks. From and after termination of this Lease with respect to any Car and until its return to Lessor, all amounts earned by such Car (inluding Casualty Cars) shall be paid to Lessor in accordance with the provisions of paragraph 2 hereof.

- 10. <u>Sublease and Assignment</u>. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:
- (a) Lessee shall have no right to assign or sublease or loan the Cars without the prior written consent of Lessor.
- (b) All rights of Lessor under this Lease may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part and Lessor agrees to give written notice to Lessee

within thirty (30) days of such assignment, pledge, mortgage, transfer or other disposition. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the Cars heretofore or hereafter created by Lessor. If Lessor shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. The making of an assignment or sublease by Lessee or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking hereunder nor impose any liability or undertaking hereunder upon such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

- 11. Default. If (i) Lessee shall fail to make any rental payment required hereunder within five (5) days after notice from Lessor that the same has become due and payable; or (ii) either party shall fail to make any other payment required hereunder within ten (10) days after notice from the other that the same has become due and payable; or (iii) either party shall breach any representation or warranty contained herein or shall default or fail for a period of ten (10) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder; or (iv) a proceeding shall have been commenced by or against Lessee or Lessor under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or Lessor or their property; or (v) Lessee or Lessor shall make a general assignment for the benefit of creditors; then and in any of said events Lessor or Lessee, as the case may be, may in addition to all other rights and remedies provided in law or equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars with respect to which said default has occurred and thereafter recover any and all damages sustained by reason of the other party's default. The obligation to pay rentals then or thereafter due or any other sum or sums due and unpaid or any damages suffered by reason of Lessee's or Lessor's default hereunder shall survive the termination of the Lease and the retaking of the Cars.
- 12. <u>Definitions</u>. For all purposes of this Lease the following terms shall have the following meanings:

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules, and, preventive maintenance as determined by Lessor to keep and maintain the Cars in good working order and repair.

"Interchange Rules" - all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any

other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, intrpretations, laws, or orders.

- 13. Representations. Lessee and Lessor respectively covenant, warrant and represent that all of the following matters shall be true and correct at all times that any Car is subject to this Lease:
 - (a) Each party is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power and authority, and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;
 - (b) This Lease has been duly executed on behalf of each party and constitutes the legal, valid and binding obligation of the respective parties enforceable in accordance with its terms;
 - (c) No governmental, administrative, or judicial authorization, permission, consent or approval is necessary on the part of either party in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgement, order or regulation, or any indenture or agreement binding upon either party; and,
 - (d) Neither party nor their respective counsel know of any requirements for recording, filing, or depositing this Lease other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Lessor or its assignee or mortgagee in the United States of America.

14. Miscellaneous.

- (a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.
- (b) Any notice permitted or required to be given by one party to the other hereunder shall be properly given when made in writing and deposited in the United States Mail, registered or certified, postage prepaid addressed to:

Lessor at: 2211 Congress St.

Portland, ME 04122

Att: Investment Administration

Lessee at: Indiana Hi-Rail Corporation

RR 1 Box 242 Connersville, IN 47331

or such other address as either party may from time to time designate by such notice in writing to the other.

- (c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect Lessor's title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by Lessor to confirm Lessor's interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.
- (d) During the continuance of this Lease, Lessor shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the day and year first above written.

(CORPORATE SEAL)

ATTEST:

INDIANA HI-RAIL CORPORATION

Date: 6-26

(CORPORATE SEAL)

ATTEST:

UNION MUTUAL LIFE INSURANCE COMPANY

AND Unionmutual Stock/Life Insurance

¢o. of America

Ats SECOND VICE PRESIDENT

RPF *(e) This Agreement is contingent upon execution by Lessor, and delivery of the executed Agreement to Lessee at Connersville, Indiana, not later than July 3, 1986.

SCHEDULE I

To Lease Agreement dated as of June 6, 1986 between Union Mutual Life Insurance Company *and Indiana Hi-Rail Corporation.

* AND Unionmutual Stock Life Insurance Co. of America

TYPE OF CAR:

4750 cu.ft. 100-ton covered hopper

Year Built: 1980

UMLER Value: \$45,300 (approx)

NUMBER OF CARS:

50

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

PERMITTED LADING:

Non-corrosive commodities

REPORTING MARKS:

To be Advised

DELIVERY POINT:

Railroad lines of Lessee at

Rushville, Indiana

LEASE TERM:

5 years

At the option of Lessor, Lessee agrees to store an additional 32 cars (a) free of charge for up to six months from the date of arrival on Lessee's tracks; (b) for a charge of \$1.00 per car per day for an additional period of six months; and (c) for a charge of \$0.75 per car per day thereafter for the remaining term of the Lease. Lessee shall invoice Lessor on a monthly basis for such storage charges, which will be due and payable within thirty days from receipt of invoice by Lessor. Lessee shall be permitted to utilize such stored cars for loading from time to time, and any mileage or perdiem revenues resulting from such use will be shared in accordance with paragraph 2 of the No storage charges will accrue on any car during such use. Lessor may terminate the storage arrangement at any time by giving written notice thereof to Lessee. In addition, provided any cars remain subject to the above storage arrangement, Lessee may make not less than all of such stored cars subject to the terms and conditions of the Lease by giving fifteen days written notice thereof to Lessor.

INDIANA HI-RAIL CORPORATION

UNION MUTUAL LIFE

INSURANCE COMPANY

AND Unionmutual Stock Life Insurance

C6. of America

Þy:/∠ Its:

COND VICE PRESIDENT/

Date

JUN 1. 1986

Date:

te: <u>6-26-86</u>

: SS.

COUNTY OF Fayette

On this 26th day of June, 1986, before me personally appeared R. Powell Felix, to me personally known who, being by me duly sworn, says that he is the President of Indiana Hi Rail Corporation, that the seal affixed to the following instrument is the seal of said organization, that said instrument was signed and sealed on behalf of said organization by authority of its governing body, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said organization.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: Westernith 4, 1990

: SS.

COUNTY OF CUMBERLAND

On this 1st day of July, 1986, before me personally appeared Leonard C. Hieronymus, to me personally known who, being by me duly sworn, says that he is the Second Vice President of Union Mutual Life Insurance Company, that the seal affixed to the foregoing instrument is the seal of said organization, that said instrument was signed and sealed on behalf of said organization by authority of its governing body, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said organization.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SHELLEY STUART CARVEL

eller Shert Carril

My Commission Expiresty COMMISSION DIPLET HAY 28, 1986

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

SS.

COUNTY OF PHILADELPHIA

I, Marshall A. Fleisher, Esquire, being a member of the Bar of the Supreme Court of Pennsylvania, hereby depose and state as follows:

- 1. I am counsel to Unionmutual Stock Life Insurance Company of America and Union Mutual Life Insurance Company in connection with a certain Lease Agreement dated as of June 6, 1986, between the foregoing named companies and Indiana Hi-Rail Corporation.
- 2. I have compared the attached copy of the foregoing Lease Agreement with the original document and found the copy to be complete and identical in all respects to the original document.
- 3. This affidavit is executed in accordance with the provisions of 49 C.F.R. Section 1177.3(b).

Marshall A. Fleisher, Esquire

Sworn to and subscribed before me this // day of // 1986.

Notary Public

CHARLOTTE ANN BEVAN
Notary Public, Phila., Phila. Co.
My Commission Expires Jan. 22, 1990